IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5141 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULLA MOHMED PATEL

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

MR NK MAJMUDAR for Petitioner.

MS SEJAL K MANDAVIA for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/03/2002

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has prayed for quashing and setting aside of the action of the respondent in proceeding with the departmental enquiry against the petitioner even though the criminal case was pending against the petitioner before the learned Chief Judicial Magistrate, Bharuch. The petitioner has further prayed for declaration that the action of respondent in

proceeding with the departmental enquiry while criminal case was already pending against the petitioner was arbitrary, unjust and illegal. The petitioner has further sought the direction of this Court to the respondent not to proceed with the departmental inquiry so long as the criminal case pending against the petitioner in the Court of the learned Chief Judicial Magistrate, Bharuch was not decided by the competent criminal court.

2. The petitioner has prayed for the interim relief to the effect that the respondent should be restrained from proceeding further with the departmental inquiry against the petitioner on the basis of the chargesheet dated 27.6.1989 till the criminal case pending against the petitioner in the Court of the Chief Judicial Magistrate, Bharuch was finally decided. The Rule was issued by this Court on 19.7.1989 and ad-interim relief was granted in terms of Para 10(E) of the petition. The said ad-interim relief was made interim relief till further orders on 17.10.1989.

3. This petition has come up for hearing today before this Court. The facts, as are emerged from the present petition, are that the petitioner was serving as Block Extension Educator at Primary Health Centre, Vagra under the District Panchayat, Bharuch and at the time when the petition was filed the petitioner was under suspension since 12-9-1988. The petitioner has further submitted in the petition that a complaint has been filed against the petitioner at the Dediyapada police station which has been registered as Crime Register No. I-7/87. The said complaint has been filed by the Administrative Officer of the District Panchayat, Bharuch on 9.2.1987 before the Police Sub-Inspector, Dediyapada on the ground that there were certain irregularities in the Primary Health Centre at Dediyapada and that false cases of family planning operations were registered and false bills and vouchers were prepared. It was alleged in the said complaint that there was misappropriation to the tune of Rs. 29,805/= in all and that the said irregularities have been committed during the period from 7.11.1982 to 30.3.1983 by the concerned employees of the District Panchayat, Bharuch. It was further submitted by the petitioner that the concerned Police Officer recorded the statements of the persons allegedly involved in the said complaint and has also submitted the chargesheet. The said criminal case was, therefore, pending in the Court of learned Chief Judicial Magistrate, Bharuch for alleged irregularities in the matter of registration of family planning cases etc.,. It was further submitted

that during the pendency of the said criminal cases the respondent thought fit to initiate departmental proceedings against the petitioner on the basis of the same irregularities as made in the criminal complaint. The petitioner was therefore served with the chargesheet by the respondent's office vide order dated 27.6.1989 wherein it has been mentioned that the persons mentioned in the chargesheet were not subjected to the family planning operations and that on the basis of the said family planning operations having already been performed, the amount as mentioned in the chargesheet has been misappropriated.

4. The petitioner, therefore, contended that on the same ground and for the said alleged ground for which criminal case has been filed in the Court of learned Chief Judicial Magistrate, Bharuch, the respondent has started initiating departmental proceedings against the petitioner. The petitioner, therefore, by his letter dated 13.7.89 requested the respondent District Development Officer not to proceed with the departmental proceedings as the criminal case filed against him was also pending before the competent criminal court. The petitioner has pointed out to the respondent that when any employee was subjected to police cases on the same ground departmental proceedings cannot be initiated and continued parallely.. The petitioner has further submitted that inspite of the letter having been written by him on 13.7.1989, the respondent was bent upon to proceed with the departmental enquiry/proceedings and therefore the petitioner was constrained to file the present petition before this Court under Article 226 of the Constitution of India. The main thrust of the petitioner's argument was that it is well-settled position of law that on identical charges once a criminal case is filed and which is pending, it is not open to the authorities to conduct departmental proceedings parallely, as in the criminal court the accused is not required to open his mouth, but in the departmental inquiry he will have to give explanation and to lead evidence. It was therefore contended that it would certainly prejudice the petitioner's case and hence the departmental proceedings are required to be stayed.

5. The law on the subject has undergone several changes after the admission of the petition, and the Hon'ble Supreme Court has decided this question in several matters. The recent decision of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony V. Bharat Gold Mines Ltd and Another, reported in AIR 1999

SC Page 1416, has discussed the entire case law on the subject. After considering the earlier cases, the Hon'ble Supreme Court has in the case of State of Rajasthan Vs. B.K. Meena, reported in AIR 1997 SC Page 13, found it necessary to emphasise some of the important considerations in view of the fact that very often disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view of the various principles laid down in the decisions referred to above. In another case, namely, Depot Manager, Andhra Pradesh State Road Transport Corpn. Vs. Mohd. Yousuf Miyan, (1997) 2 SCC 699, the Hon'ble Supreme Court has held that there is no bar to proceed simultaneously with the departmental inquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law.

6. After discussing all the cases referred to in the decision of M. Paul Anthony (Supra), the Hon'ble Supreme Court has deduced the following conclusions from the various decisions of the Hon'ble Supreme Court:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above

cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

7. If I apply the above principles laid down by the Hon'ble Supreme Court to the facts of the present case, it is found that the departmental proceedings were stayed under the order of this Court on 19-7-1989 and about 12 years has passed after the said order. In its all likelihood, the criminal proceedings must have been over by this time. Neither the petitioner nor his advocate nor the respondent or his advocate is present and hence it is not possible to ascertain the present position or status of the departmental proceedings as well as the criminal proceedings, but in any case the departmental proceedings are pending awaiting the decision of criminal proceedings. Hence such a long period, though under the order of the Court is neither advisable nor desirable. Time and again the Courts have held that if the criminal case is unduly delayed that may itself be a good ground to go ahead with the disciplinary inquiry even where the disciplinary proceedings are held over at an earlier stage. It would be in the interest of administration that persons accused of serious misdemeanour should be continued in the office indefinitely awaiting the result of criminal proceedings." It is very sorry state of affairs that the respondent has not placed before this Court any material with regard to the pendency of the criminal proceedings and even at the hearing of the present petition, the said facts are not made known to this Court. In any case, the facts were required to be placed on record stating that whether the criminal proceedings were decided or they were delayed either under one or another pretext and consequently some steps should have been taken by the respondent to proceed with the departmental proceedings after taking necessary order from this Court. But in any case, after a lapse of about 12 years, I am of the view that the departmental

proceedings cannot be stayed any further, in view of the principles laid down by the Hon'ble Supreme Court. It is, in terms, held by the Hon'ble Supreme Court, the departmental proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately.

8. In view of the facts and circumstances of the present case and in view of the law laid down by the Hon'ble Supreme Court, I am of the view that there is no merit in the petition and hence the petition deserves to be rejected. It is, accordingly, rejected. Rule is discharged with no order as to costs. The interim relief stands vacated forthwith.

rmr. [K.A. Puj, J.]